

and to obtain and present necessary proof in support of said claim, as required by an act of Congress entitled 'an act to authorize the Secretary of the Treasury to examine and report to Congress the amount of all claims of the States of Texas, Colorado, Oregon, Nebraska, California, Kansas and Nevada, and the Territories of Washington and Idaho, for moneys expended and indebtedness assumed by said States and Territories in repelling invasions and suppressing Indian hostilities, and for other purposes,' approved June 27, 1882, to provide means and to employ the necessary clerical force to enable said board to discharge its duties, and to make an appropriation to pay the expenses of the same," and find the same correctly enrolled, and have this day, at 11:10 o'clock a. m., presented the same to the Governor for his approval.

COOPER, Chairman.

Senator Jones moved to suspend the regular order of business and take up Senate bill No. 244.

Postponed for the present.

Senator Stratton moved to take up Senate bill No. 134, "An act to authorize Christian Jordan to sue the State of Texas."

Adopted, and bill taken up, read third time and passed.

Senator Chesley moved to suspend the regular order of business, and take up Senate bill No. 280.

The Senate refused to suspend the regular order of business and take up the bill.

Senator Traylor moved to suspend the regular order of business, and take up Senate joint resolution No. 29, amending section 24, article 3, of the Constitution.

Adopted, and resolution taken up and read second time.

The following committee amendments were adopted:

Strike out the words "except the first session held under this Constitution, when they may receive not exceeding five dollars per day for the first ninety days."

Senator Houston offered the following amendment:

Substitute for the subject matter of this resolution the following:

"Members of the Legislature shall not receive any pay for their services, and may remain in session until the business is disposed of."

Lost by the following vote:

YEAS—11.

Collins,	Fleming,	Houston,
Davis,	Getzendaner,	Johnson of Collin,
Evans,	Gibbs,	Jones,
Farrar,	Harris,	

NAYS—12.

Chesley,	Martin,	Shannon,
Fowler,	Matlock,	Stratton,
Gooch,	Patton,	Terrell,
Johnson of Shelby,	Randolph,	Traylor.

Senator Martin offered the following amendment:

"After expiration of the first sixty days of the session, the Governor shall, by message, select such measures as the Legislature shall consider from that time till the close of the session."

Lost.

Senator Davis moved the previous question on the engrossment of the bill.

Motion seconded, and main question ordered.

The bill was ordered engrossed by the following vote:

YEAS—16.

Buchanan,	Gooch,	Poppe,
Chesley,	Johnson of Shelby,	Shannon,
Collins,	Matlock,	Stratton,
Cooper,	Patton,	Terrell,
Fowler,	Pfeuffer,	Traylor.
Getzendaner,		

NAYS—11.

Davis,	Gibbs,	Jones,
Evans,	Harris,	Martin,
Farrar,	Houston,	Randolph.
Fleming,	Johnson of Collin,	

On motion of Senator Chesley, the Senate adjourned till 10 o'clock a. m., Monday next.

## SIXTY-FIRST DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, March 26, 1883.

The Senate met pursuant to adjournment.

President pro tem. in the chair.

Roll called. Quorum present.

Prayer by the Chaplain.

On motion of Senator Kleberg, the reading of Saturday's journal was dispensed with, and the same adopted.

Senator Patton, chairman of Committee on State Affairs, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, March 26, 1883.

Hon. A. W. Houston, President pro tem. of the Senate:

Your Committee on State Affairs, to whom was referred House bill No. 59, entitled "An act to amend sections 1, 2 and 9 of an act entitled an act to amend an act, entitled 'an act creating the office of public weigher, and regulating the appointment and defining the duties and liabilities thereof,'" have carefully examined the same, and a majority instruct me to report the same back with the recommendation that it do pass.

All of which is respectfully submitted.

PATTON, Chairman.

Bill read first time.

Senator Farrar, for Judiciary Committee No. 1, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, March 26, 1883.

Hon. A. W. Houston, President pro tem. of the Senate:

Your Judiciary Committee No. 1, to whom was referred House bill No. 528, entitled "An act to make null and void all sales of land illegally and fraudulently made under 'an act to provide for the sale of the alternate sections of land in unorganized counties, as surveyed by railroad companies and other works of internal improvement, and set apart for the benefit of the common school fund,' approved July 8, 1879, and an act amendatory thereto, approved April 6, 1881," have had the same under consideration, and they instruct me to report the accompanying substitute for said House bill, with a recommendation that it do pass.

All of which is respectfully submitted.

FARRAR, for Committee.

Bill, with committee substitute, read first time.

On motion of Senator Farrar, 100 copies of the committee substitute were ordered printed.

Senator Terrell, chairman of Judiciary Committee No. 1, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, March 26, 1883.

Hon. A. W. Houston, President pro tem. of the Senate:

Your Judiciary Committee No. 1, to whom was referred House bill No. 377, entitled "An act to amend sections 3, 6 and 10, of 'an act in relation to assignments for the benefit of creditors, and to regulate the same, and the proceedings thereunder,' approved March 24, 1879," have examined the same, and instruct me to report it back with the recommendation that it do pass, with the following amendments:

1. Strike out section three and the engrossed rider.
2. Amend the caption by striking out the word "three."

All of which is respectfully submitted.

TERRELL, Chairman.

Bill read first time.

Senator Pfeuffer introduced a bill to be entitled "An act authorizing the refunding from the State treasury, for deposit made by special funds to parties who may have paid the same in error, and who may have received no consideration therefor."

Referred to Committee on Claims and Accounts.

Senator Stratton introduced a bill to be entitled "An act

authorizing cities and towns to vacate invalid or defective special assessments heretofore made for the improvement of streets, sidewalks, alleys or grounds, or for any other public works within their limits, and to make re-assessments for such improvements and to collect such re-assessments."

Referred to Judiciary Committee No. 1.

Senator Shannon, by request, introduced a bill to be entitled "An act to amend articles 1006, 1007 and 1008 of the Revised Civil Statutes of the State of Texas, approved February 21, 1879."

Referred to Judiciary Committee No. 1.

On motion of Senator Shannon, Senator Chesley was excused for non-attendance at the morning session of today.

On motion of Senator Davis, substitute for House bills Nos. 101, 143, 181, 216, 372, 375 and 391, "An act to amend articles 3759, 3762, 3766 and 3768, and to repeal article 3758, of chapter 3, title 78, of the Revised Civil Statutes of the State of Texas," was ordered printed.

Senator Harris moved that the Senate go into executive session this morning.

Lost.

Senator Davis moved that the Senate go into executive session immediately after roll call to-morrow, on the appointments of the Governor.

Adopted.

The President gave notice of signing substitute for House bills Nos. 5, 50, 416, 421 and 476, "An act to reorganize the fifth, seventeenth and thirty-fifth judicial districts, and to fix the times of holding courts therein, and to change the times of holding the courts in the seventh, fourteenth, twenty-fourth, twenty-ninth and thirty-fourth judicial districts," etc.

The morning call having expired,

Senator Harris moved that the Senate go into committee of the whole to consider substitute House bill No. 394, "An act making an appropriation for the support of the State government for the years beginning March 1, 1883, and ending February 28, 1885," this being the business fixed for this hour.

Adopted, and

The Senate went into committee of the whole.

#### IN SENATE.

Senator Harris, chairman of the committee of the whole, on House bill No. 394, general appropriation bill, reported that the committee had had said bill under consideration, and asked leave of the Senate to sit again at 3 o'clock p. m.

Report adopted.

Senator Terrell, chairman of Judiciary Committee No. 1, by leave, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, March 26, 1883.

Hon. A. W. Houston, President pro tem. of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 340, entitled an act to be entitled "An act to authorize suits against the officers of the executive departments, and to fix the venue of the same," have carefully examined the same, and a majority instruct me to report the same back with the recommendation that it do not pass.

This bill provides that if any of the executive officers of the State, except the Governor, shall fail or refuse to perform any act or discharge any duty required of him by law, suit may be instituted against him in the district court of Travis county, to try the issues of law and determine what relief, if any, the parties are entitled. While the bill provides that no injunction, mandamus, or other compulsory writ shall issue in such cases, it provided that the officer sued shall observe and conform to the judgment therein rendered, and the practical effect of the bill will, in the judgment of your com-

mittee, be the same as if the issuance of compulsory writs were authorized.

All of which is respectfully submitted.

TERRELL, Chairman.

Bill read first time.

The following minority report on above bill was submitted:

COMMITTEE ROOM,  
AUSTIN, March 24, 1883.

Hon. A. W. Houston, President pro tem. of the Senate:

The undersigned, a minority of your Judiciary Committee No. 1, to whom was referred Senate bill No. 340, entitled "An act to authorize suits against the officers of the Executive Department, and to fix the venue of the same," respectfully dissent from the views of the majority of said committee, and recommend the passage of said bill for reasons following, to-wit:

That while the bill does not propose a repeal of the act of February 15, 1881, entitled "An act defining who are officers of this State, and prescribing their rights, powers, duties and privileges," it is, however, such a modification of that law as will measurably restore to the courts of the State their just and proper functions, and to the citizen the exercise, in a modified form, of his constitutional rights. There is no good or sufficient reason why the courts of this State should be stripped of their powers and dignity as a co-ordinate branch of government, and their right to issue mandamus and other remedial writs abridged, or that the citizen should be limited in the exercise of his constitutional rights. It is respectfully submitted that from the organization of the State government of Texas under the Constitution of 1845, until the rendition of the opinion by the Supreme Court of this State in the case of the Houston Tap and Brazoria Railroad Company vs. Randolph, 24 Texas, page 317, a period of more than fifteen years, there was neither question nor an intimation that the individual citizen did not possess, in full force, the right to freely exercise his constitutional guarantee of "an open court wherein he could enforce, by due course of law, a remedy for any injury done him in his lands, goods, person, or reputation," and to present, for the determination of a "jury of the vicinage," questions of fact wherein his rights depended.

It was not, however, until 1874, after the demoralization incident to a gigantic civil conflict had come upon the country, that a full and complete disregard of the guaranteed rights of the citizens was accomplished. The intimation in the case above cited lay dormant from its rendition in 1860 until, in 1874, it became the inspiration of the opinion of the court in the case of the International Railroad vs. Bledsoe, 40 Texas, page 537. It was then thought by the court, and so decided, just as it is now believed by a majority of your committee, that it was expedient for the court to surrender its powers and dignity, and withhold from the citizen the issuance of such remedial writs, as it was his constitutional right to have. Thus was practically engrafted upon our laws, by judicial announcement, the principle that the citizen "had no rights which heads of the Executive Department were bound to respect, whenever from expediency, inclination or caprice, they might, in the performance of a ministerial act, see fit to disregard." The principle announced in the International case did not long survive; it was repudiated by the same court with full bench, at the same term. (See Kuechler v. Wright, 40 Texas, page 600).

Thus stood the rights of the citizen, and the power and dignity of the courts of Texas, from the beginning of her existence as a State, until the passage of the act of February 15, 1881, which, in so far as legislative enactment could do, prostrated not only individual rights, but the powers of a co-ordinate branch of the government, before the demands of expediency and a false idea of the requirements and necessities of the State's land policy.

It is respectfully submitted, that during all the period of the State's existence, from the beginning to the passage of the act of February 15, 1881, that no serious inconvenience was ever felt by the State government; that none of her officers were ever embarrassed or harassed by a multiplicity of vexatious litigations. Neither was her public domain squandered, nor any of her just rights infringed or imperiled. On the contrary, under that wise policy of making good the purposes and guarantees of free government, in protecting the citizen and the courts in the full exercise of their constitutional rights and functions, the State prospered, and laid, not only the foundations, but preserved our present magnificent land endowment to public schools, university and asylums. Not alone this, but during that period, before legislative usurpation had boldly stricken down a co-ordinate branch of government, the State formulated her railroad system, aided them by liberal land donations, as well as her other works of internal improvement, thus adding more than a million to her population, and many millions to her taxable wealth. These good results all came about

during that time when the citizen enjoyed to the fullest extent his constitutional rights of an open court and "trial by jury," and while the courts of the State were in full possession and exercise of the powers, and dignity of right belonging to them as one of the three co-ordinate branches of our government. Why then the change of policy, resulting in the act of February 15, 1881? We submit that there is no reason to continue said act in force and without modification, unless it be to accord legislation with the dicta of an overthrown judicial opinion.

The minority of your committee cannot subscribe to the doctrine that in a free government any one department is above the law or superior to the Constitution. Such we believe to be the principle proclaimed by the above act. The courts of the national government in Texas are open, and in the exercise of the full and undiminished powers which of right belong to them. In these courts non-residents can enforce, and do enforce, against the heads of departments their rights, while the citizens of Texas can have no relief because the above act closes the courts of our own State against its citizens. If the bill under review fails, and the present denial of right, without some modification, such as the bill proposes, it will cause our own people to look rather to the nation than the State for protection. It will tend to accomplish in fact, if not in theory, that consolidation of government in this country to that center which it has ever been the effort and policy of the party now controlling the destiny of Texas to prevent.

The bill proposes no repeal of the act of February 15, 1881, in express terms, but if passed will be such a modification of its provisions as will allow the citizen having right of action to sue any one of the heads of Executive Department of the State government, except the Governor, who may, in the administration of his department, withhold or infringe upon any right the citizen has, and to authorize the district court of Travis county to hear and determine the suit, with right of appeal to both the citizen and the State as in other civil cases, and makes it obligatory upon the head of such department, in case judgment be in favor of the citizen, to obey the judgment of the court and to satisfy the same, but that no compulsory writ or process shall issue against such officer. The district court of Travis county is held but just across the street from the State Capitol, where the officers of all the several Executive Departments are located. No inconvenience can result, all records and other evidence necessary for the State to defend are accessible, and in fact, at hand. It is believed that no other government but Texas has the boldness to defend the principle upon which rests the act of February, 1881, and that in all the other States the courts are open with power to issue all writs known to our laws, and that the United States, in addition to the remedies afforded through the issuance of the usual remedial writs known to the Constitution and laws, has also provided and located a court at Washington city, known as a "court of claims," wherein the humblest, alike with the highest, can have his claims and rights against the government heard and determined.

We respectfully present these our reasons, and earnestly recommend the passage of the bill.

All of which is respectfully submitted.

A. E. STRATTON,  
W. R. SHANNON,  
W. O. DAVIS,  
J. R. FLEMING.

Senator Chesley, for Judiciary Committee No. 1, submitted the following report:

COMMITTEE ROOM,  
AUSTIN, March 26, 1883.

Hon. A. W. Houston, President pro tem. of the Senate:

Your Judiciary Committee No. 1, to whom was referred Senate bill No. 346, to amend articles 1066, 1007 and 1008 of the Revised Civil Statutes, have considered the same, and instruct me to report it back with the recommendation that it do pass.

The object of the bill is to transfer Burleson and Washington counties from the Austin to the Galveston branch of the Supreme Court, and Navarro county from the Austin to the Tyler branch of the Supreme Court.

All of which is respectfully submitted.

CHESLEY, for Committee.

On motion of Senator Shannon, the Senate adjourned to 3 o'clock p. m.

#### AFTERNOON SESSION.

Senate met pursuant to adjournment.  
President pro tem. in the chair.

Roll called. Quorum present.

The President announced the unfinished business to be the consideration of the appropriation bill, and called Senator Harris to the chair, and the Senate went into committee of the whole.

IN SENATE.

(Senator Houston, president pro tem., in the chair.)

Senator Harris, chairman of the committee of the whole, reported progress on House bill No. 394, the general appropriation bill, and asked that the committee be allowed to sit again after morning call, to-morrow.

Granted.

Senator Patton, for Committee on Engrossed Bills, submitted the following reports:

COMMITTEE ROOM,  
AUSTIN, March 26, 1883.

Hon. Marion Martin, President of the Senate:

Your Committee on Engrossed Bills have carefully examined and compared Senate bill No. 341, being "An act amendatory of an act to incorporate the city of Austin," etc.

Also, Senate bill No. 310, "An act to provide for the disposition of minerals on public school, university, asylum and public lands," etc.

Also, Senate bill No. 44, "An act to provide for leasing the unorganized county school leagues."

And find the same correctly engrossed.

PATTON, for Committee.

COMMITTEE ROOM,  
AUSTIN, March 26, 1883.

Hon. A. W. Houston, President pro tem. of the Senate:

Your Committee on Engrossed bills have carefully examined and compared Senate bill No. 114, being "An act to authorize the location and survey within the limits of the county of Greer of such certificates of land as were issued under an act of the Legislature approved March 15, 1881, to certain classes of veterans."

Also, Senate bill No. 11, "An act to amend article 714 of the Code of Criminal Procedure."

Also, Senate joint resolution No. 29, "A joint resolution amending section 24, article 3, of the Constitution."

And find the same correctly engrossed.

PATTON, for Committee.

The following message was received from the House:

HALL HOUSE OF REPRESENTATIVES,  
AUSTIN, March 26, 1883.

Mr. President:

I am instructed to inform your honorable body that the House of Representatives has concurred in Senate amendments to House bill No. 513, entitled "An act to authorize the Secretary of State to sell copies of the general and special laws of the State."

Also, that the House has concurred in Senate amendments to House bill No. 175, entitled "An act to amend article 951, title 24, of the Revised Statutes."

Also, that the House has refused to concur in Senate amendments to substitute House joint resolutions Nos. 6, 8 and 27, "to amend section 9, article 8, of the Constitution of the State of Texas."

J. W. BOOTH,

Chief Clerk House of Representatives.

On motion of Senator Collins, the Senate adjourned till 9:30 to-morrow.

#### SIXTY-SECOND DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, March 27, 1883. }

Senate met pursuant to adjournment.

The President pro tem. in the chair.

Roll called. Quorum present.

Prayer by the Chaplain.

On motion of Senator Stratton, the reading of the journal was dispensed with and the same adopted.

Senator Evans, for Committee on State Affairs, submitted the following report: